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10/549,328	10/24/2005	Jochen Ratjen	5082-2	8225
23117 7590 09/24/2008 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
NGUYEN, TRAN N				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ADVISORY ACTION

Notice to Applicant

This communication is in response to the communication filed 08/29/2008.

Pending claim(s): 1-26, 28-29. Cancelled claim(s): 27. Amended claim(s): 14.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 08/07/2008 is entered and considered by Examiner.

Response to Amendment

The newly added limitations in claim 14 require further search and consideration because these new limitations change the scope from that previously claimed.

Response to Arguments

Applicant's arguments filed 08/29/2008 have been fully considered but they are not persuasive.

On page 9 Applicant asserts "Applicants do not understand the Examiner's statement in the "Response to Argument"".

On 12/19/2007 Applicant presented claim amendments in response to the Office Action mailed 08/24/2007. Applicant also presented arguments directed towards newly added limitations in the Remarks filed 12/19/2007 (see page 24-25).

The Office Action mailed 04/02/2008 addressed all limitations of all pending claims, and applying new art where appropriate as necessitated by Applicant's amendment.

To clarify the record, the previous Examiner asserted that all of Applicant's pending arguments were moot in view of the new grounds of rejection presented therein, as necessitated by Applicant's amendment.

On page 9 Applicant asserts "official notice was only used by the Examiner to reject claims 6 and 29. Claims 1-5, 7, 9-10, 12-23, and 25-26 remain rejected based on Konkright alone".

Claims 1-26, 28 were previously amended. Claim 29 was newly added.

The previous Office Action addressed all limitations of all claims, and applied new art where appropriate as necessitated by Applicant's amendment.

First, the previous Office Action stated "Examiner has applied new prior art to the amended features of amended claims 1-26 and 28-29 at the present time".

Therefore, it is clear that Applicant's arguments directed at the newly amended features are moot.

Second, the previous Office Action stated "Applicant's remarks with regard to the application of Konkright to the amended claims are moot in light of the inclusion of the teachings of Official Notice".

To clarify the record, the only new ground of rejection presented in the Final Rejection is the inclusion of the Official Notice as applied to claims 6, 29. All other amended features were taught in the art originally applied in the Non-Final Rejection.

On page 9 Applicant asserts "Examiner did not respond to the distinctions pointed out in Applicants' first response".

As discussed above, all arguments directed towards newly added limitations were moot in view of the rejections presented in the Final Rejection. Therefore all of Applicant's arguments were moot.

Examiner submits that all features purported by Applicant as not being taught by the applied art have been addressed by the Office Action (see page 2-10).

Therefore, all of Applicant's claim limitations have been addressed, and Applicant's arguments were found not to be persuasive.

On page 9 Applicant asserts "it would be appropriate and fair for the Examiner to issue another final office action, but this time with responses to the specific points raised in Applicants' prior response".

Examiner submits that all claim limitations have been addressed in the previous Office Action. Therefore, all limitations purported by Applicant as not being taught by the applied art have been fully addressed.

On page 9 Applicant asserts "Examiner is also requested to identify by reference number the element in Konkright's Figure 1 that correspond to each element in each claim".

Examiner submits that all claim limitations have been previously addressed. See the previous Office Action mailed 04/02/2008.

Additionally, it is not clear what basis Applicant has for insisting that all claim limitations be present in a single figure. There exists no requirement that an anticipatory reference disclose all claimed features in a single figure.

Additional clarification is requested.

As per claim 1, on page 10 Applicant argues that the applied art do not teach "a memory arranged for obtaining and storing in memory patient-specific information related to specific medication of the patient and information from said detector".

In particular, Applicant argues that the dispenser of Konkright does not store this data.

Applicant's characterization of the prior art is incomplete and inaccurate.

As previously cited, Konkright teaches that the dispenser is operatively coupled to the communicator by the patient to form a single processing unit (column 5 line 53-57).

Konkright further teaches that the communicator is capable of storing a patient's medication schedules (reads on "patient-specific information related to specific mediation") (column 6 line 12-19), and monitoring that the medication has been

dispensed and removed from the hopper (column 5 line 66 to column 6 line 3) for use in updating pending medication events in view of the stored schedule (column 5 line 33-38).

On page 10 Applicant argues that the applied art do not teach "a communication device for communication with a wireless communication system arranged for transmission data related to said information related to specific medication of the patient, which transmission of data is activated depending on information from said detector".

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a wireless communication system) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Insofar as the wireless communication system is recited, this feature has not been positively recited as a structural element of the claimed system. Note "communicating with a wireless communication system", "communication with a wireless communication", etc.

For purposes of applying prior art, Examiner interprets this limitation as a functional limitation, wherein the particular claimed structural elements are capable of communicating with the wireless network.

In particular, Applicant argues that the terminal of Konkright is wire-connected.

Konkright teaches that the receivers are capable of communicating with a central monitoring means over a wireless communication network to perform the functionality of the system (column 3 line 10-12).

Examiner submits that a computer capable of receiving data transferred over a wireless radio network necessarily meets the claimed limitation of "a wireless communication system".

Konkright further teaches using the hopper to monitor if the patient has taken the medication, and using this data to update the medication schedule (column 5 line 53 to column 6 line 18).

On page 10-11 Applicant argues that the applied art do not teach a memory.

Konkright teaches that the medication devices are capable of displaying the medication schedule for confirmation by the user (Figure 2).

Examiner submits that a wireless device capable of displaying data exhibit a form of "memory", even if the device is just a "dumb terminal". Examiner submits that at least the display itself is a memory, wherein data is stored on the display for the user.

Additionally, Examiner submits that wireless devices are a class of computer, and therefore inherently uses memory to realize the functionality of the software programmed into the computer.

The remainder of Applicant's arguments on page 11 with respect to claim 1 merely rehashes arguments previously addressed above, and incorporated herein.

As per claim 14, Applicant's arguments are directed towards newly added limitations that were denied entry, and therefore will not be addressed.

As per claim 1, on page 11 Applicant argues that the communicator of Conkright is not included in the medicament device.

This argument has been previously addressed above, and incorporated herein.

In particular, Conkright teaches operatively connecting the communicator to the dispensing apparatus (column 5 line 53-65). Conkright further teaches that the communicator is capable of communicating with the radio network (Figure 1 label 30).

On page 12 Applicant further argues that the applied art do not teach transferring data from the patient communicator related to specific medication of the patient depending on information from the detector.

In making this argument, on page 12 Applicant admits that Conkright teaches generating a signal indicating that medicament has been dispensed.

Examiner considers indicating that a particular medication has been dispensed to be "patient-specific information related to specific medication of the patient and information from said detector", wherein the dispensing of medication is considered to be "information from said detector".

On page 12 Applicant asserts "Claims 6 and 9 stand rejected of obvious based on Conkright and "official notice".

Examiner submits that claim 9 was previously rejected as being anticipated by Conkright alone.

For examination purposes, Examiner assumes Applicant is referring to claim 29.

As per claim 6, on page 12 Applicant argues "Applicants challenge the official notice position. Official notice is for things that are notoriously well known. All that Conkright describes is sending a signal that indicates medication was dispensed. The signal does not indicate how much, by who[m], when, what medication, etc. The Examiner is requested to supply a reference that teaches sending a signal that includes "a patient specific medication event indicating that an incorrect amount of medication was dispensed to the patient or that medication prescribed for the patient was not dispensed at a designated time." (emphasis in original)

Applicant provided no further arguments regarding the Official Notice.

MPEP 2144.03(C) reads as follows: "To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b)... A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate...

If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate".

Based on the MPEP, Applicant's traversal was inadequate because Applicant did not state why the noticed fact is not considered to be common knowledge or well-known in the art.

In particular, Applicant's arguments were directed to the fact that Conkright does not teach the noticed facts.

This traversal is inadequate because Applicant's arguments do not address the noticed facts themselves.

Assuming *arguendo* that Applicant's traversal is adequate, Conkright explicitly teaches that dispensing apparatus is capable of providing data indicative of the patient failing to obtaining medication within a particular threshold of time (column 6 line 43-53).

According to Conkright, if the medication is not detected as being removed from the dispensing apparatus, secondary notifications are provided to follow up with the patient (column 5 line 66 to column 6 line 3, column 6 line 44-53).

Therefore, the noticed facts are considered to be admitted prior art.

Conclusion

In view of the totality of the evidence, the finality of the previous Office Action is hereby maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tran (Ken) N. Nguyen whose telephone number is 571-270-1310. The examiner can normally be reached on Monday - Friday, 9:00 am - 5:00 pm Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, C. Luke Gilligan can be reached on 571-272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. N./
Examiner, Art Unit 3626
09/15/2008

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/C Luke Gilligan/

Supervisory Patent Examiner, Art Unit 3626